

United States District Court
DISTRICT OF NEW JERSEY

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IN THE MATTER OF THE APPLICATION OF:
OXUS GOLD PLC FOR ASSISTANCE BEFORE: INDEX NO. MISC-06-82
A FOREIGN TRIBUNAL :

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APPLICATION FOR ORDER TO SERVE SUBPOENA PURSUANT TO 28 U.S.C. § 1783

Petitioner Oxus Gold plc (“Oxus”), hereby applies to this Court for an order, pursuant to 28 U.S.C. § 1783, N.J. Local Civil Rule 27.1, and Rules 26, 30, 34 and 45 of the Federal Rules Civil Procedure, acknowledging that Oxus may effect service of a subpoena, previously issued under an order of this Court, outside the United States by serving that subpoena in accordance with the provisions of the Federal Rules of Civil Procedure for service of process on a person in a foreign country. In support of this request, Oxus states as follows:

1. By order dated August 11, 2006, this Court authorized counsel for Oxus to issue a subpoena, pursuant to 28 U.S.C. § 1782, for the production of documents and deposition testimony from Jack A. Barbanel, a United States citizen who resides at 1312 Blue Spring Road, Princeton, New Jersey, 08540.

2. Subsequent to the August 11th order, Oxus learned that Mr. Barbanel is presently outside the United States and is expected to be in Moscow, Russia at least through the end of this week. In order to immediately effect service of the subpoena authorized by this Court, Oxus now seeks an order authorizing it to serve Mr. Barbanel with the subpoena outside the United States. Title 28 U.S.C. § 1783 authorizes this Court to issue such an order and requires that the order specify the “estimated necessary travel and attendance expenses” to be incurred in complying with the subpoena.

3. Attached hereto as Exhibit A is the Declaration of Thomas R. Valen, identifying the travel expenses and attendance fees that Oxus has estimated for purposes of this application. Based on (a) the published air fares for round trip flights from Moscow to Newark, New Jersey; (b) the per mile travel expenses from Newark to this District authorized under federal law; and (c) three days of attendance fees to compensate the witness for his travel time and attendance at the requested deposition, Oxus has estimated that travel expenses and attendance fees for purposes of this request to be between \$1250.42 and \$9664.42.

4. Title 28 U.S.C. § 1783 authorizes the service of the subpoena outside the United States where, as here, the witness is a United States citizen and the requested discovery “is necessary in the interest of justice” and “it is not possible to obtain his testimony in admissible form without requiring his personal appearance.” As set forth in the application under which this Court authorized issuance of the subpoena, this requested discovery is for purposes relating to proceedings pending before foreign tribunals and is expressly authorized under 28 U.S.C. § 1782. As set forth in Oxus’s § 1782 application, Mr. Barbanel’s testimony is necessary and in the interest of justice inasmuch as he served as a consultant for entities involved in the foreign proceedings and has, upon information and belief, information directly relevant to those proceedings. *See, e.g., Klesch & Co. v. Liberty Media Corp.*, 217 F.R.D. 517, 523 (authorizing service of a subpoena in Germany under 28 U.S.C. § 1783 on a United States citizen as being “in the interests of justice” where the U.S. citizen served as a consultant for one of the entities involved in the transactions that gave rise to litigation).

WHEREFORE, Oxus respectfully prays that this Court enter an Order:

A. acknowledging that Oxus may effect service of the subpoena, authorized by this Court’s August 11 order in the above-referenced matter, by effecting such service in accordance

with the provisions of the Federal Rules of Civil Procedure relating to service of process on a person in a foreign country; and

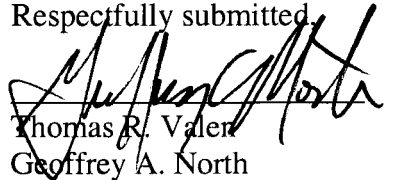
B. providing that the person serving the subpoena tender payment for Mr. Barbanel's travel expenses and attendance fees in the amount of \$7500.

A proposed order is attached hereto.

Dated: August 16, 2006

Trenton, New Jersey

Respectfully submitted,



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